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23 June 2004

Wayne Hastie
Greater Wellington Regional Council
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WELLINGTON

Wellington Regional Council	
24 JUN 2004	
FILE REF:	
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Doc 214100	
Referred to	Date/Int
W Hastie	CSJ

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Dear Wayne

REMISSION OF RATES REQUEST

At its meeting held 21 April 2004, the Porirua City Council considered providing assistance for the Seiuli family whose house was damaged by a falling tree during the February 2004 storms. The Seiuli family had approached Council initially seeking assistance from a Mayor’s Disaster Relief Fund. However because of the minimal damage experienced in Porirua by the February storm, no Mayor’s Disaster Relief Fund was established for this City.

Attached is a copy of the report considered by the Porirua City Council that gives the background information to this request.

The Porirua City Council agreed that as well as providing a grant of \$5,000 towards restoration of the dwelling at 24 York Place, Porirua East, it would provide the Seiuli family with Remission of Rates of \$1,149.00 in accordance with Section 180 of the Rating Powers Act 1988. It also agreed that it would request that Wellington Regional Council provide a Remission of Rates of \$142.79.

We would appreciate the Greater Wellington Regional Council also providing a remission of rates to the Seiuli family in accordance with Section 180 of the Rating Powers Act 1988.

Please contact me if you need any further information on this matter.

Yours sincerely

Mike Chapman
INFORMATION, ADMINISTRATION AND DEMOCRATIC SERVICES MANAGER

ENCL_____

Files: AD/2/7/6

SP/14

AD/9/6

PORIRUA CITY COUNCIL**CONFIDENTIAL**

Section 7(2)(a)—to protect the privacy of natural persons, including that of deceased natural persons.

Support Services Business Unit

13 April 2004

HER WORSHIP THE MAYOR AND COUNCILLORS**EMERGENCY ASSISTANCE TO REPAIR STORM DAMAGE****PURPOSE OF REPORT**

The purpose of this report is to seek assistance for the Seiuli family whose house was damaged by a falling tree during the February 2004 storms.

BACKGROUND

The Seiuli family live at 24 York Place, Porirua East. They are uninsured. During the February storms a tree, planted on the rear boundary of their section, was blown over landing on the rear of their house causing extensive damage to the roof, walls and floor of the rear part of the dwelling. On 17 February 2004 the building was declared unsafe for habitation by the Building Compliance section of the Council under section 64 of the Building Act 1991. Since then the owners have had the portions of the tree imbedded and leaning against the house removed. They have also isolated the power to the damaged part of the house and have moved back into the undamaged front of the dwelling. Estimates to repair the damage caused are in the order of \$20,000 - \$25,000. This estimate has been confirmed by Council's Building Compliance office.

The Seiuli's have approached Council verbally to seek assistance with reinstatement of their house – initially seeking assistance from a Mayors Disaster Relief Fund. Because of the minimal damage experienced in Porirua by the February storm no Mayors Disaster Relief Fund was established for the City.

PROPERTY BOUNDARY AND TREE OWNERSHIP

Initial investigations by Council indicated that the tree that caused the damage was planted on the boundary of two private properties. Subsequent surveying carried out by Council contractors has shown that the neighbour to the rear of 24 York Place has 'acquired' a portion of Council Recreation Reserve by straightening a fence line. The survey has shown that the damage-causing tree straddles the boundary between 24 York Place and Council Recreation Reserve encroached on by the owner or occupier of 9 Lincoln Grove, Porirua East. There is no record of when the tree was planted or by whom.

COUNCIL LIABILITY

Council Officers have approached our insurers, New Zealand Mutual Liability Riskpool, to check on liability issues. In a written response Riskpool advise that *...it would appear that Council was unaware of any responsibility for this tree as it was not realised that it was on Council reserve because of an unauthorised encroachment onto the reserve in the area of the tree's location, that there had been no prior reported problems with the tree's condition and that the tree's collapse was through extreme winds at the time.*

“For these reasons, Council should not be deemed negligent and is in a position to deny liability for any damage costs. It is necessary to point out, however, that, because it is considered that Council has no liability, the RiskPool cover does not operate as there is no evidence of a loss from proven Council negligence.”

POSSIBLE COUNCIL ASSISTANCE

Council Leisure and Recreation officers have offered to arrange for the removal of the tree trunk and stump by either a commercial sawmiller or by Council staff at no cost to the Seiuli's on the basis of being a good neighbour without accepting any liability for the damage caused.

The Council Community Development Officer is also investigating possible assistance from Housing for Humanity and the Work and Income Relief Fund.

As stated above the Seiuli's are not insured. Following storms of the type experienced in February, assistance to uninsured persons is normally provided through the establishment of a Mayors Disaster Relief Fund – this is the process being followed in Hutt City, Manawatu, Horowhenua and Wanganui for damage caused by the same event. Unfortunately for the Seiuli's, damage in Porirua was minimal and did not warrant the establishment of such a fund.

Council could, however, offer assistance in two areas – remission of rates and an ex gratia payment of the excess of the liability insurance.

REMISSION OF RATES

Section 180 of the Rating Powers Act 1988 states:

“Where the use that may be made of any land has been detrimentally affected by erosion, subsidence, submersion, or other natural calamity, any local authority may, where it considers it to be fair and reasonable to do so, remit, wholly or in part, any rate or charge or uniform annual general charge made and levied in respect of the land, or the payment of any minimum rates specified in section 109 of this Act. --

Although the Rating Powers Act 1988 was repealed by the Local Government Rating (2002) Act this Section is retained until 30 June 2004 by Section 139 of the latter Act.

The rates for 24 York Place are \$1,291.79 per annum paid by Direct Debit. This figure includes the Wellington Regional Rate of \$142.79. The balance of Rates owing on 24 York Place for the remainder of this rating year are \$268.57.

EX GRATIA PAYMENT

In acknowledging that there is no legal liability for any damage costs Council may still feel that there is some responsibility as a good neighbour to assist in rectifying the damage caused by trees that were partly on Council property, albeit this was unknown at the time because of a neighbours encroachment. The sum of \$5,000 is the excess that Council would have had to pay had our insurers accepted liability for this event.

RECOMMENDATIONS

That the Council:

1. Provide the Seiuli family with Remission of Rates of \$1,149.00 in accordance with Section 180 of the Rating Powers Act 1988; and
2. Request that Wellington Regional Council provide a Remission of Rates of \$142.79, and
3. Provide a grant of \$5,000 towards restoration of the dwelling at 24 York Place, Porirua East; and
4. Note that officers have offered to arrange for the removal of the tree trunk and stump.

Mike Chapman

INFORMATION, ADMINISTRATION & DEMOCRATIC SERVICES MANAGER

Reviewed and approved for submission to Council by:

Keith Miller

GENERAL MANAGER SUPPORT SERVICES